

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ORLANDO RAMIREZ,

Plaintiff,

v.

**COBB MECHANICAL CONTRACTORS,
INC.**

Defendant.

§
§
§
§
§
§
§
§
§

Cause No. 20-CV-00004

NOTICE OF REMOVAL

Defendant COBB MECHANICAL CONTRACTORS, INC. (“Defendant”) files this Notice of Removal, removing the case styled *Orlando Ramirez v. Cobb Mechanical Contractors, Inc.*, Cause No. 2019DCV4527 from the 41st Judicial District Court in El Paso County, Texas to this Court pursuant to 28 U.S.C. §§ 1331 and 1441. The grounds for removal are as follows:

PROCEDURAL BACKGROUND

1. On November 22, 2019, Plaintiff Orlando Ramirez (“Plaintiff”) filed suit in state court asserting claims against Defendant for disability discrimination and retaliation.
2. Plaintiff served Defendant with the lawsuit on December 9, 2019. Accordingly, this removal is timely filed pursuant to 28 U.S.C. § 1446. Defendant timely filed its Original Answer in state court on December 27, 2019. True and correct copies of all pleadings filed in state court are attached hereto.

FEDERAL QUESTION JURISDICTION

3. This Court has original jurisdiction because Plaintiff’s claims are brought under the Americans with Disabilities Act, as amended (“ADA”). 42 U.S.C. §§ 12101 *et seq.* Although Plaintiff’s state court Petition does not cite to any specific statute, undersigned defense counsel

conferred with Plaintiff's counsel who confirmed that Plaintiff was indeed suing Defendant under the ADA. Specifically, Plaintiff's counsel represented that Plaintiff's state law discrimination and retaliation claims under Chapter 21 of the Texas Labor Code were barred by the 180-day statute of limitations¹ and that, consequently, the sole available remedy for the alleged causes of action was under the ADA.

4. Therefore, because Plaintiff's only viable claims arise under the ADA, this case is removable on the basis of federal question jurisdiction notwithstanding Plaintiff's failure to specify the statute in his Original Petition. *See Shepard v. Longhorn Pipeline Partners, LP*, 524 F.Supp.2d 838, 841 (W.D. Tex. 2007) (Cardone, J.) (denying a motion to remand even though the petition failed to cite a specific law because plaintiff's state law claims were unviable leaving federal law as the only viable remedy).

PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE

5. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

6. Defendant will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Defendant will also promptly file a copy of this Notice of Removal with the Clerk of the 41st Judicial District Court in El Paso County, Texas, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

¹Chapter 21 of the Texas Labor Code, the Texas statute that prohibits employment discrimination and retaliation, requires charges of discrimination to be filed "no later than the 180th day after the date the alleged unlawful employment practice occurred." Tex. Lab. Code § 21.202. In his Original Petition, Plaintiff alleges his employment was terminated on May 1, 2018, and, thus, he was required to file his Charge by October 28, 2018 (180 days later). Plaintiff filed his Charge on November 21, 2018, well beyond the 180-day deadline applicable to Chapter 21 claims but within the 300-day deadline applicable to ADA claims, *see* 42 U.S.C. § 12117(a), 42 U.S.C. § 2000e-5(e). Exhibit B, Plaintiff's Charge of Discrimination No. 453-2019-00283.

7. True and correct copies of all process, pleadings, and the orders served upon Defendant in the state court action are being filed with this notice as required by 28 U.S.C. § 1446(a) and attached hereto as Exhibit A.

8. Pursuant to 28 U.S.C. § 1446(b), this Notice Removal is timely filed within 30 days of service of Plaintiff's Original Petition and within one (1) year from the commencement of this lawsuit.

WHEREFORE, Defendant pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removes the case styled *Orlando Ramirez v. Cobb Mechanical Contractors, Inc.*, Cause No. 2019DCV4527 from the 41st Judicial District Court in El Paso County, Texas on this 6th day of January 2020.

Respectfully submitted,

KEMP SMITH LLP
221 N. Kansas, Ste. 1700
El Paso, Texas 79901
915.533.4424
915.546.5360 (Facsimile)

By: /s/ Gilbert L. Sanchez
CHARLES C. HIGH, JR.
State Bar No. 09605000
charles.high@kempsmith.com
GILBERT L. SANCHEZ
State Bar No. 24060550
gilbert.sanchez@kempsmith.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via electronic transmission on attorneys for Plaintiff, Brett Duke, 6350 Escondido Dr., Suite A-14, El Paso, Texas 79912 and Daniela Labinoti, 707 Myrtle, El Paso 79901 on this 6th day of January 2020.

/s/ Gilbert L. Sanchez
GILBERT L. SANCHEZ